IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 226 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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BANABHAI DESABHAI MATANG
Versus
THE STATE OF GUJARAT

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Appearance :
None for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 02/02/2007

ORAL JUDGMENT

1. The appellant – original accused convicted for an offence under Sections 363, 366, 376 and 506(2) of the Indian Penal Code (“IPC”, for short) by the learned Presiding Officer, Fast Track Court No.6, Jamnagar at

Khambhaliya by judgment and order dated 13.12.2005 is before this Court.

The learned Judge was pleased to award 7 years R.I., fine of Rs.10,000/- and in default, 6 months S.I. for offence under Section 376 of IPC.

For offence under Section 363 of IPC, the learned Judge was pleased to award 3 years R.I., fine of Rs.3,000/- and in default, 3 months S.I.

For offence under Section 366 of IPC, he was pleased to award 5 years R.I., fine of Rs.5,000/- and in default, 4 months S.I.

For offence under Section 506(2) of IPC, the learned Judge was pleased to award 3 years R.I., fine of Rs.500/- and in default, 15 days S.I.

The learned Judge was pleased to order that out of fine amount, an amount of Rs.15,000/- be paid to the victim by way of compensation.

2. The appeal was filed on 08.02.2006. The same was listed along with Criminal Misc.Application No.1351 of 2006 for hearing on 01.12.2006. On that day, the Court passed the following order:

“It is reported that, learned advocate, who appears

for the applicant, who had initially filed this matter, is now appointed as AGP, therefore, he wants some time to make alternative arrangement in the matter. S.O. to 11.12.06."

On 11.12.2006, the matter was notified along with an office note and letter dated 02.12.2006 of Advocate Shri Hemant K.Makwana addressed to the Registrar of this Court, wherein it is stated that:

"With regard to above mentioned subject, I the undersigned had filed above mentioned matter before this Honourable Court and it has come up for it's admission hearing before this Honourable Court (Coram: Hon'ble Mr.Justice R.R.Tripathi). But since I have been appointed as Assistant Government Pleader in this Honourable Court, would not be appearing against the State of Gujarat, which is party as respondent...."

The office was directed to issue notice to the applicant/appellant – Banabhai Desa Matang, intimating him the date of hearing of the Criminal Misc.Application and the present appeal to be 17.01.2007 and to make necessary arrangement to represent his case.

The matter was listed on 17.01.2007 and it was adjourned to 25.01.2007. On 25.01.2007, this Court passed the following order:

"Notice issued by this Court to the applicant –

appellant is stated to have been served.

Nobody appears.

With a view to give an additional opportunity to the appellant, the matters are ordered to be notified on 02.02.2007."

3. It is pointed out that the notice issued by this Court is served to the appellant and the papers are returned with an endorsement of the Jailer, Ahmedabad Central Jail dated 29.12.2006.

4. Coming to the merits of the case, the case of the prosecution is that on the day of the incident, i.e. 22.11.2003, a complaint is filed by the prosecutrix stating that on 14.11.2003, at around 09.00 pm, when she had gone to answer the call of nature, the driver of the dumper – Bana Desa, at which she was going for labour work caught hold of her, threatened her with knife and asked to accompany her. She was taken to the railway tack side and thereafter, by truck, to Dhrol and from there, she was taken to Ranavav, the place of aunt of Bana Desa. There she was kept for two days and was subjected to intercourse forcibly. On 16.11.2003, uncle of the accused – appellant – Khamo, Moyo with Jeepwala of village Bhatiya and one more person, total 4 in number came to Ranavav and told the complainant – victim that

she is being searched hence, she should accompany them to go to her place. By making her sit in the jeep, she was brought to the residence of Bana Desa, where they had stayed for three days. There also, she was subjected to intercourse forcibly. It was on 19.11.2003 at around 08.30 PM that uncle of the appellant – accused – Rano had accompanied the complainant – victim to drop her at her parent's house. She was left on the road.

The victim on reaching home, informed her parents about the incident. The victim thereafter was taken to Jamnagar on 21.11.2003 to the S.P's office along with her parents, uncle – Virabhai, brother – Pithabhai and uncle – Bhima Manga.

5. The complaint was registered as C.R.I.No.94 of 2003 at Kalyampur Police Station for the offence under Sections 363, 366, 376 and 506(2) of IPC and Section 135(1) of the Bombay Police Act. The matter was investigated by Head Constable, Shri Ghanshyamsinh Chanubha, who drew the panchnama of the scene of offence and recovered the cloths of the victim in presence of the panchas. Thereafter, the investigation was carried by PSI, Shri Jadeja, who had recorded the statements of the concerned witnesses. A Yadi was sent for taking blood sample of the victim – complainant. The medical

examination was carried out and as the complainant was minor, Section 363 of IPC was added. A Yadi was sent to the learned JMFC, Kalyanpur to add Section 363 of IPC. After receiving the report from FSL, Junagadh of the analysis of muddamal and after obtaining the copy of the notification prohibiting to carry and keep arms, the investigation was taken over by PI, Shri Sarvaiya, who recorded statements of the mother and father of the victim and other relevant witnesses.

The accused was arrested after drawing arrest panchnama. The accused had shown cloths and the knife from his residence, the same were recovered in presence of the panchas. The accused was sent for medical examination. A Yadi was sent to Talati-cum-Mantri of 'Beh' Gram Panchayat. On receipt of the reoirt from the FSL, Junagadh about the accused, PSI, Shri Jadeja filed the charge sheet in the Court of learned JMFC, Khambhaliya on 20.10.2004. The case was registered as Criminal Case No.179 of 2004.

On accused remaining present in the Court, the learned JMFC, Khambhaliya supplied copies of the police papers to him. It was also ascertained that the accused wants to engage an Advocate at his own cost. The case was then committed to the Sessions under Section 209 of

the Criminal Procedure Code (“Code”, for short) and it was registered as Sessions Case No.16 of 2004.

6. The prosecution relied upon following oral evidence:

Witness No.	**Name**	**Relation**	**Exh.No**
Witness No.2	Manjulaben Kalabhai	Victim	Exh.16
Witness No.9	Kalabhai Mangabhai	Father of the victim	Exh.25
Witness No.3	Prafulkumar Vallabhdas	Panch of the Panchnama of scene of offence	Exh.18
Witness No.4	Rameshgar Devgar	Panch of the Panchnama of scene of offence	Exh.19
Witness No.5	Ashokbhai Dharmshi Raichura	Panch of the Panchnama of recovery of cloths of the victim	Exh.20
Witness No.6	Rajubhai Vajshibhai	Panch of the Panchnama of recovery of cloths of the victim	Exh.21
Witness No.7	Chanabhai Aeshabhai	Panch of the Panchnama of recovery cloths and knife from the accused	Exh.22
Witness No.8	Shamjibhai Bhanabhai	Panch of the Panchnama of recovery cloths and knife from the accused	Exh.23
Witness No.1	Dr.Ashokkumar Ramshringar Shah	Doctor, who examined the body of the accused	Exh.10
Witness No.10	Dr.Gulabbhai Jethabhai Solanki	Doctor, who examined the body of the victim	Exh.27

Witness No.	Name	Relation	Exh.No
Witness No.11	Rupaji Khatiju Modiya	P.S.O.	Exh.35
Witness No.12	Ghanshyamsinh Chanubha	Head Constable and Investigating Officer	Exh.37
Witness No.13	Mahavirsinh Navalsinh Sarvaiya	P.I. And Investigating Officer	Exh.40
Witness No.14	Ajaysinh Pravinsinh Jadeja	P.S.I. and Investigating Officer	Exh.48
Witness No.15	Rasiklal Bhagvanji Dhamecha	Head Constable and Investigating Officer	Exh.57.

Besides, the prosecution relied upon following documentary evidence:

Sr. No.	Description of the Document	Exh.No.
1.	Copy of Yadi sent to Medical Officer, Kalyampur for medical examination of the accused	Exh.11
2.	Xerox copy of medical certificate of the accused	Exh.12
3.	Medical O.P.D. Case paper of the accused of Community Health Centre, Kalyanpur	Exh.13
4.	Original complaint of the complainant	Exh.17
5.	Arrest and body situation Panchnama of the accused	Exh.24
6.	Copy of Yadi sent to G.G.Hospital for medical examination of the victim	Exh.28
7.	Xerox copy of the form pertaining samples of the victim	Exh.29
8.	Case papers of the victim as In-door patient and Exh.2	Exh.30
9.	Copy of Yadi sent to Gynaech Section of G.G.Hospital for sending the victim for medical examination	Exh.32

Sr. No.	Description of the Document	Exh.No.
10.	Medical certificate issued by the Gynaecologist of the victim	Exh.33
11.	Medical certificate issued by the Radiologist of the victim	Exh.34
12.	Panchnama of scene of offence (house of the accused)	Exh.38
13.	Panchnama of production of cloths by the victim	Exh.39
14.	Panchnama of recovery of cloths and muddamal from the accused	Exh.41
15.	Copy of Yadi sent to Talati-cum Mantri, Beh to give birth certificate of the victim	Exh.43
16.	Copy of Yadi sent to FSL. Junagadh to analyze the muddamal	Exh.44
17.	Copy of entry of sending the muddamal	Exh.45
18.	Certificate of jurisdiction	Exh.46
19.	Receipt of FSL, Junagadh of receiving the muddamal	Exh.47
20.	Copy of Yadi sent to Medical Officer, Bhatiya for taking blood sample of the victim	Exh.49
21.	Copy of form with seal of Ranavav Medical Officer pertaining to blood taken of the victim	Exh.50
22.	Yadi sent to JMFC, Kalyanpur to add Section 363 in the FIR	Exh.51
23.	Report of the FSL, Junagadh along with forwarding letter	Exh.52
24.	Report of the FSL, Junagadh	Exh.53
25.	Serialogical report of the FSL, Junagadh along with forwarding letter	Exh.54
26.	Serialogical report of the FSL, Junagadh	Exh.55
27.	Notification prohibiting to carry and keep arms	Exh.56
28.	Police Patrak of loss of Manjulaben	Exh.58
29.	Extract of Kalyanpur Police Station C.R.No.2 of 2003 dated 16.11.2003	Exh.59.

7. Record and Proceedings is received. Mr.H.L.Jani, learned Additional Public Prosecutor assisted the Court by inviting attention of the Court to the deposition of the victim – P.W.No.2 – Manjulaben Kalabhai at Exh.16 and deposition of the father of the victim – P.W.No.9 – Kalabhai Mangabhai at Exh.25 on the point of the age of the victim. The learned Additional Public Prosecutor also invited attention of the Court to the deposition of P.W.No.1 – Dr.Ashokkumar Ramshringar Shah at Exh.10, who examined the accused and deposition of P.W.No.10 – Dr.Gulabbhai Jethabhai Solanki at Exh.27, who examined the victim.

The learned Additional Public Prosecutor also invited attention of the Court to the medical evidence at Exh.33 – certificate issued by the Gynaecologist, Exh.34 – certificate issued by the Radiologist, FSL report at Exh.53. He also invited attention of the Court to Exh.55 – serialogical report of FSL, Junagadh.

All the aforesaid evidence was perused from the Record and Proceedings, which was kept in the Court for perusal.

8. The learned Additional Public Prosecutor invited attention of the Court to the fact that the age of the victim was 15 to 16 years. He submitted that the victim

belongs to 'downtrodden' strata of the society. Her social and educational background is also on record. The learned Additional Public Prosecutor also pointed out that the accused is a married person and only with a view to have an illicit intercourse, the victim was taken away by the accused – appellant from the lawful guardianship of her parents. The learned Additional Public Prosecutor submitted that the victim was under 16 years of age, which adds gravity to the offence of rape.

The learned Additional Public Prosecutor submitted that in the present case, the learned Judge has awarded only the minimum sentence provided under the law. He submitted that according to him, the learned Judge has not committed any error in recording the conviction and awarding the sentence.

9. Having perused the Record and Proceedings, having considered the submissions made by the learned Additional Public Prosecutor, the Court finds no substance in the appeal. Hence, the appeal is dismissed.

(RAVI R.TRIPATHI, J.)

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